

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
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DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

LEON EPPS, JR. and DIANA M. HARRIS-EPPS
Respondents

Case Nos.: I-00-10416
I-00-11014

FINAL ORDER

I. Introduction

This cases arises under the Civil Infractions Act of 1985 (D.C. Code § 6-2701, *et seq.*) and Title 21, Chapter 5 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (00-10416) served on November 14, 2000, the Government charged Respondents Leon Epps, Jr. and Diana M. Harris-Epps with violating the following regulations: 21 DCMR 506.2 (failure to comply with an approved erosion and sedimentation plan); 21 DCMR 538.1(k) (failure to establish temporary cover by seeding or mulching graded areas); 21 DCMR 539.5 (creating period of exposure exceeding one hundred twenty (120) days); 21 DCMR 539.6 (failure to provide temporary or permanent stabilization during or after rough grading); and 21 DCMR 539.3 (failure to protect all exposed, unprotected areas within a minimum amount of time). The Notice of Infraction alleges that Respondents violated the aforementioned regulations at 2930 14th Street, N.E. on November 14, 2000, and seeks a total fine of \$450.00 for the alleged violations. *See* 16 DCMR 3234.2, 3234.3.

On December 27, 2000, this administrative court issued an order finding Respondents in default for failing to answer timely the Notice of Infraction (00-10416). As a result of Respondents’ default, the

December 27 order imposed a statutory penalty of \$450.00 pursuant to D.C. Code § 6-2712(f). In addition, the December 27 order directed the Government to serve a second Notice of Infraction pursuant to D.C. Code § 6-3712(f). The Government served the second Notice of Infraction (00-11014) on January 3, 2001.

Because Respondents failed to answer timely the second Notice of Infraction, this administrative court issued a Final Notice of Default on February 12, 2001. The February 12 order imposed an additional statutory penalty of \$450.00 pursuant to D.C. Code § 6-2712(f). In addition, pursuant to D.C. Code § 6-2713, the February 12 order scheduled an *ex parte* proof hearing for March 14, 2001, at which Respondents could elect to appear to contest liabilities, fines, penalties, or fees in accordance with applicable law. Enclosed with the Final Notice of Default were copies of the first and the second Notices of Infraction.

Prior to the March 14, 2001 hearing, and in accordance with the requirements of the February 12 order, the Government submitted eight exhibits in support of the Notices of Infraction. With certain exceptions, these exhibits were offered and received into evidence at the hearing. *See* Petitioner's Exhibits ("PX") 100-106, 108 and 109.¹ The inspector who issued the Notices of Infraction also appeared for hearing and testified under oath. Respondents did not appear at the hearing, nor did they submit any evidence.

¹ PX-108 contains a series of inspection reports, some of which relate to Respondents' property at 2930 14th Street, N.E. and some of which do not. As set forth more fully in the record of these proceedings, the pages in Exhibit 108 that relate to site inspection dates of November 16, 2000; November 15, 2000; November 14, 2000; and November 13, 2000 are excluded from the record. Moreover, the first page of the site plans offered as PX-109 erroneously describes the construction site as 2930 14th Street, "S.E."

II. Findings of Fact

Based upon direct observation of the testimony of the inspector, which this administrative court finds to be credible, the exhibits submitted by the Government and the entire record in this case, this administrative court makes the following findings:

1. On October 19, 1999, Respondents applied to the D.C. Department of Consumer and Regulatory Affairs (“DCRA”) for a permit to construct a one-story addition and engage in interior renovations at the property located at 2930 14th Street, N.E. PX-101.
2. On October 27, 1999, DCRA issued Respondents a building permit (B427607) for the work as described in the October 19 application. PX-101.
3. On July 19, 2000, Respondent Diana M. Harris-Epps applied to DCRA for a permit to construct a second floor addition at the property located at 2930 14th Street, N.E. PX-100.
4. On July 21, 2000, DCRA issued Respondent Diana M. Harris-Epps a building permit (B428270) for the work as described in the July 19 application. PX-101, pt. 2.
5. According to the D.C. Office of Tax and Revenue’s real property tax bill for tax year 2000, both Respondents are the owners of the property located at 2930 14th Street, N.E. PX-105.
6. According to the D.C. Office of Tax and Revenue’s real property tax bill for tax year 2000, Respondent Diana M. Harris-Epps is the sole owner of the property located at 1214 Duncan Place, N.E. PX-105A.
7. The Government served the Notices of Infraction in this matter upon Respondents on November 14, 2000 and January 3, 2001 by regular or certified mail, as evidenced by the

- certificates of service signed by the Government's representative. The address used was 1214 Duncan Place, N.E.²
8. This administrative court served the December 27, 2000 default order and the February 12, 2001 final notice of default, which set the date for the *ex parte* hearing, by U.S. Mail/Delivery Confirmation to Respondents at the Duncan Place address.
 9. The inspector first observed exposure at the 2930 14th Street, N.E site sometime in early October 2000. The first Notice of Infraction (00-10416) charging a violation of 21 DCMR 539.5, however, was served on November 14, 2000 - approximately forty-five (45) days later.
 10. As of November 14, 2000, Respondents had failed to erect all necessary silt fences as set forth in the erosion and sediment control plan for the 2930 14th Street site. PX-109.
 11. As of November 14, 2000, Respondents had failed to properly stabilize and cover graded and other exposed or unprotected areas at the 2930 14th Street site. PX-109.
 12. Respondents have offered no explanation in these proceedings for their failure to answer the Notices of Infraction.

² During the hearing, the inspector explained that service was not attempted upon Respondents at the 2930 14th Street, N.E. address because the property was under construction and was vacant at the time of the alleged violations.

III. Conclusions of Law

1. Respondent Diana M. Harris-Epps had sufficient notice of the charges against her as mandated both by the Due Process Clause and the Civil Infractions Act of 1985. Service of the Notices of Infraction by mail to Respondent's last known home or business address, *i.e.*, 1214 Duncan Place, N.E., is sufficient notice. *See Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985); D.C. Code § 6-2715; PX 105A.
2. According to the tax records submitted by the Government, the service address of 1214 Duncan Place, N.E. is the mailing address for Respondent Diana M. Harris-Epps only. The Government failed to present any additional evidence that would tend to establish that Respondent Leon Epps, Jr. worked or resided at the Duncan Place address. The Duncan Place address, therefore, cannot be construed as Respondent Leon Epps, Jr.'s last known home or business address. Accordingly, Respondent Leon Epps, Jr. did not have sufficient notice of the charges against him as mandated by both the Due Process Clause and the Civil Infractions Act of 1985.³ *See Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*,

³ Absent an express agreement to the contrary, service upon a wife does not constitute service upon her husband. *See Shakesnider v. Rosenfeld*, 144 A.2d 106, 107 (D.C. 1958). The Government has presented no evidence of such an agreement between Respondents in this case. Moreover, because the Government has not established that the Duncan Place address is the last known home or business address of Respondent Leon Epps, Jr., delivery of the Notices of Infraction to Respondent Diana M. Harris-Epps at that address also would not constitute constructive notice to Respondent Leon Epps, Jr., *i.e.*, delivery to a "person of suitable age and discretion residing or employed therein . . .," for purposes of the Civil Infractions Act of 1985. *See* D.C. Code § 6-2715.

- 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985); D.C. Code § 6-2715; PX-105A.
3. On November 14, 2000, Respondent Diana M. Harris-Epps violated 21 DCMR 506.2 by failing to comply with the approved erosion and sedimentation plan for the 2930 14th Street, N.E. site. PX-109.
 4. For violating 21 DCMR 506.2, Respondent Diana M. Harris-Epps shall pay a fine in the amount of \$100.00. *See* 16 DCMR 3234.2(c).
 5. On November 14, 2000, Respondent Diana M. Harris-Epps violated 21 DCMR 538.1(k) by failing to establish temporary cover by seeding or mulching graded areas at the 2930 14th Street, N.E. site.
 6. For violating 21 DCMR 538.1(k), Respondent Diana M. Harris-Epps shall pay a fine in the amount of \$100.00. *See* 16 DCMR 3234.2(w).
 7. On November 14, 2000, Respondent Diana M. Harris-Epps violated 21 DCMR 539.6 by failing to provide temporary or permanent stabilization during or after rough grading at the 2930 14th Street, N.E. site.
 8. For violating 21 DCMR 539.6, Respondent Diana M. Harris-Epps shall pay a fine in the amount of \$100.00. *See* 16 DCMR 3234.2(aa).
 9. On November 14, 2000, Respondent Diana M. Harris-Epps violated 21 DCMR 539.3 by failing to protect all exposed, unprotected areas within a minimum amount of time at the 2930 14th Street, N.E. site.⁴

⁴ At the hearing, the inspector testified that violators of this provision are given a ten (10) day window in which to come into compliance. In the absence of a statutory or regulatory definition of the phrase, “minimum amount of time,” this administrative court concludes that, on the facts and on the totality of the circumstances of this case, a ten (10) day window is not inconsistent with the requirements of 21 DCMR 539.3.

10. For violating 21 DCMR 539.3, Respondent Diana M. Harris-Epps shall pay a fine in the amount of \$50.00. *See* 16 DCMR 3234.3(d).
11. On November 14, 2000, Respondent Diana M. Harris-Epps did not violate 21 DCMR 539.5. The record is insufficient to establish by a preponderance of the evidence that the period of exposure at the 2930 14th Street, N.E. site exceeded the one hundred twenty (120) days threshold under 21 DCMR 539.5. *See* Findings of Fact, at ¶ 9.
12. Respondent Diana M. Harris-Epps failed to answer both the first and second Notices of Infraction without demonstrating good cause for those failures, and therefore is liable for statutory penalties of \$900.00 in addition to the civil fine prescribed for her violations. *See* D.C. Code §§ 6-2704(a)(2)(A) and 6-2704(a)(2)(B).⁵

Therefore, upon the entire record in this case, it is hereby this _____ day _____, 2001.

ORDERED, that all charges as listed in the first Notice of Infraction (00-10416) and the second Notice of Infraction (00-11014) are hereby **DISMISSED**, without prejudice, as against Respondent Leon Epps, Jr., only; and

ORDERED, that Respondent Diane M. Harris-Epps shall cause to be remitted a single payment totaling **ONE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$1,250.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15)

⁵ Although this administrative court has dismissed the charge of violating 21 DCMR 539.5 and its attendant fine of \$100.00, Respondent Diana M. Harris-Epps remains liable for the \$200.00 in penalties assessed by the February 12, 2001 order for Respondent's failure to answer the charge of violating 21 DCMR 539.5 as set forth in the first and second Notices of Infraction. *See* D.C. Code §§ 6-2704(a)(2)(A), 6-2704(a)(2)(B), 6-2712(f).

calendar days plus five (5) calendar days for service by mail pursuant to D.C. Code § 6-2715). A failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's license or permits pursuant to D.C. Code § 6-2713(f).

/s/ **3-23-01**

Mark D. Poindexter
Administrative Judge